IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 565 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJULABEN MANGALDAS PATEL

Versus

MANGALDAS RAMDAS PATEL

Appearance:

MR AR MAJMUDAR for Petitioner No. 1

SERVED BY AFFIX.-(R) for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/02/2003

ORAL JUDGEMENT

1. On second call out also, learned advocate for the petitioner is not present.

2. Having gone through the records carefully, it

transpires that this Revision Application is filed against an order passed by the learned Second Joint Civil Judge (SD), Vadodara, below Exh. 5 and 8 in Special Civil Suit No.926/2001 on 3rd of November, 2001. The present petitioner preferred the above said Special Civil Suit for maintenance under Section 18 of the Hindu Adoption and Maintenance Act. In the said suit, an application at Exh.5 for interim maintenance came to be filed by the present petitioner and vide his order the same was granted on 9th of May, 1997 to the extent that the present respondent shall pay Rs.2,000/- to the petitioner till the disposal of the application. Thereafter, the same application came to be heard bi-parte. After hearing the parties, the learned Trial Judge came to the conclusion that merely because the wife has made an application for interim maintenance, the same cannot be granted as matter of course. It was further concluded that having regard to the facts and circumstances of the case as discussed in the order, the application for interim maintenance, according to the learned Trial Judge was required to be dismissed.

3. Firstly, the order impugned against which the Revision Application is filed is squarely covered by the amending provision of Section 115(1)of the Civil Procedure Code. It has been provided categorically by the proviso that this court shall not vary or reverse any order made in the course of a suit or other proceedings, except where the order, if it had been made in the favour of revisionist, would have finally dispose of the suit or other proceedings. An order in favour of the present petitioner undoubtedly would be granting her application at Exh.5 and awarding interim alimony to her till the final disposal of the suit. However, this order would not have disposed of the Special Civil Suit No. 926/2001.

4. In the facts and circumstances as narrated above, this Court has no jurisdiction to interfere with the order impugned as the same is barred by the above said provision. Therefore, this Revision Application is dismissed as the same is not maintainable. Rule is discharged.

(J.R. Vora, J.)

p.n.nair